

REAL ESTATE EXCISE TAXES
RCWs 82.45 and 82.46

Tax Base

Sales of real estate measured by the full selling price, including the amount of any liens, mortgages, or other debts. The tax also applies to transfers of controlling interests in entities that own property in the state.

Tax Rate

State = 1.28 percent for exclusive use in funding K-12 education and public works assistance (RCW 82.45.060).

Cities and counties = up to 0.25 percent for financing of capital improvements (RCW 82.46.010(2)). The most common combined state/local tax rate is 1.53 percent, because 267 cities and 37 counties have implemented the original 0.25 percent local tax.

Cities and counties = up to 0.5 percent for general purposes of the city or county (RCW 82.46.010(3)). However, this tax may only be imposed if the city or county does not levy the second 0.5 percent local sales tax pursuant to RCW 82.14.030(2). The cities of Clarkston and Asotin are the only jurisdictions which levy this rate.

Cities and counties = up to 0.25 percent for exclusive use in financing capital projects specified in a comprehensive plan (RCW 82.46.035(2)). This tax was authorized in 1990 and has been implemented to date by 127 cities and 14 counties.

Counties = up to 1.0 percent for exclusive use in acquiring and maintaining conservation areas (RCW 82.46.070). This tax, authorized by the Legislature in 1990, has been implemented only in San Juan County.

Counties = 0.5 percent for financing acquisition, construction, and operation of affordable housing facilities for persons with low/moderate income or those with special needs (RCW 82.46.075). Authorized in 2002, the statute requires that for this tax to be levied, the county must have imposed the 1.0 percent local REET for conservation areas (above) by January 1, 2003. Since the conservation areas tax was only levied by San Juan County, this tax for affordable housing is effectively restricted to San Juan County. However, San Juan County has not yet exercised this authority.

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|---|-------------------|
| Combined state/local rate in most areas | = 1.53% or 1.78%. |
| Highest combined rate (Friday Harbor) | = 2.78% |

Levied by State, cities, and counties. For the two local 0.25 percent taxes and the 0.5 percent local tax, the county rate only applies in the unincorporated area and the city rate only applies within the city. The two 1 percent county taxes apply countywide, including incorporated areas.

Recent Collections (\$000)

| <u>Fiscal Year</u> | <u>Collections*</u> | <u>% Change</u> | <u>% of All State Taxes</u> |
|--------------------|---------------------|-----------------|-----------------------------|
| 2004 | \$615,618 | 19.8% | 4.7% |
| 2003 | 513,996 | 18.7 | 4.2 |
| 2002 | 432,910 | (0.3) | 3.7 |
| 2001 | 434,310 | (0.2) | 3.7 |
| 2000 | 435,088 | 1.7 | 3.7 |
| 1999 | 428,006 | 12.0 | 3.7 |
| 1998 | 382,213 | 26.8 | 3.4 |
| 1997 | 301,444 | 9.4 | 2.9 |
| 1996 | 275,633 | 8.0 | 2.8 |
| 1995 | 255,116 | (8.6) | 2.7 |

*State tax only.

According to data reported by local governments to the State Auditor via the Local Government Financial Reporting System (LGFRS), local real estate excise taxes collected during calendar year 2003 amounted to \$213.6 million:

Jurisdictions Reporting Local REET Collections

| | | |
|----------|-----|-----------------|
| Cities | 233 | \$128.4 million |
| Counties | 39 | \$ 85.2 " |

Administration

The real estate excise tax is typically paid by the seller of the property, although the buyer is liable for the tax if it is not paid. However, the 1 percent county tax adopted in 1990 specifically imposes the tax upon the purchaser. The Department of Revenue is generally responsible for the state tax, including promulgation of rules, preparation of the affidavit form, and enforcement actions. County treasurers actually collect the state and local taxes, except for the tax that applies to acquisition of the controlling interests which is reported directly to the Department. Counties retain 1 percent of the collections from the state tax, the initial city/county tax of 0.25 percent, and the 0.5 percent city/county tax as compensation for the cost of collection. The tax is paid along with filing of an affidavit form which is signed by either the seller or the buyer of the property. The affidavit contains the identification of the buyer and seller, a description of the parcel, the selling price, and other information about the property.

Distribution of Receipts

1.0 percent of the state tax collected by counties is retained to cover administration costs. Of the net proceeds to the state, 7.7 percent is deposited in the public works assistance account to help fund maintenance of local government public works facilities. The remainder of the state tax is dedicated to support of basic education pursuant to RCW 82.45.180(1). See discussion under Tax Rate section for use of local tax funds.

Penalties levied on delinquent tax payments are dedicated to the housing trust fund pursuant to RCW 82.45.100(6).

Exemptions, Deductions and Credits

- exemption for property acquired by gift, inheritance, and other transfers which do not represent market transactions at "arm's length," such as transfers to a corporation or partnership owned by the transferor or his/her own family members.
- exemption for transfers to lien holders when such transfers are "in lieu" of foreclosure or forfeiture.
- exemption for real property acquired from a governmental entity, including federal, state, or local jurisdictions.
- exemption for business transfers in which no gain or loss for federal income tax purposes occurs.
- credit for the amount of tax paid upon single family residential property, if the property is transferred to a real estate broker or other party who resells it within nine months.

History

The real estate excise tax was initially authorized as a county tax in 1951. The authorizing statute permitted a tax of up to 1 percent with all receipts dedicated to school districts within the county, except for 0.5 percent which was retained by the county to cover administration costs.

Consistent with the 1978 Court ruling that funding for basic education is a state responsibility, this tax was shifted to the state level, effective September 1, 1981. Actual collection of the tax remained with county treasurers. All receipts, except 1 percent for county collection costs, were earmarked within the state general fund for education.

Two surtaxes which were applied during 1982 increased the state tax rate to 1.07 percent. Also in 1982 the first two local real estate taxes were authorized: 0.25 percent for capital purposes and 0.5 percent in lieu of the second 0.5 percent local sales tax.

In 1987 the Legislature repealed the conveyance tax which was a tax of \$1.00 (50 cents until 1983) for each \$500 of equity in real estate and other instruments conveyed to another person by the owner. In its place the rate of the real estate excise tax was raised by an equivalent amount, so that the state rate was increased from 1.07 to 1.28 percent, effective on May 18, 1987. (In 1985 the Legislature dedicated a portion of the conveyance tax receipts to the public works assistance account which helps local governments maintain streets, bridges, sewers, etc. An equivalent percentage, 7.7 percent, of the state real estate excise tax is accordingly dedicated to this account.)

The same 1987 legislation imposed an additional real estate excise tax of 0.06 percent to provide funding for state acquisition of conservation lands by the Department of Natural Resources. This additional tax, which raised the state rate to 1.34 percent, was effective from May 18, 1987 until June 30, 1989, when it expired.

Two local real estate excise taxes, the 1 percent county tax for conservation areas and the 0.25 percent city/county tax for capital projects specified in comprehensive local plans, were authorized by the Legislature in 1990. The 1 percent local tax for affordable housing was authorized in 2002.

In 1993 the tax was extended to the acquisition of a controlling interest in an entity which owns real property within the state. The tax applies only to the real property which the entity owns in Washington. This change was enacted to counter a growing practice of structuring transactions involving commercial/industrial property to avoid the tax. Also, the previous exemption for sales of real estate to a governmental entity was repealed. In 1999 controlling interests were defined as any acquisition of an entity within a 12-month period, even if the acquisition occurs in steps.

Discussion/Major Issues

During fiscal year 2004 there were approximately 344,000 taxable sales of real estate in Washington. Collections of the tax mirror changes in the local housing market and therefore can exhibit significant volatility, making the receipts difficult to forecast. For example, collections during each of the past two fiscal years increased by nearly 20 percent over the previous year, reflecting a booming real estate market, principally in the Puget Sound region. However, receipts the previous two years actually declined.

Traditionally, the state tax has been devoted to funding of education. Lately, funds from the state and local real estate excise taxes have been used to fund programs resulting from rapid development and in-migration into the state. Since new residents purchase real estate, this is considered an appropriate revenue source for such programs. However, it does tend to penalize long-time residents who need to sell their property. Likewise, it creates an inequitable situation between those households and businesses which must sell, vis-a-vis others who remain at their present location.